

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1162 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

RANJITSINH BHAVSINH GADHVI

Appearance:

Mr. J.D. Ajmera, for the petitioner.

Mr. P.M. Thakkar, for the respondent.

Coram: S.K.KESHOTE,J

Date of decision: 6.9.96

C.A.V. JUDGMENT

The respondent employee instituted regular civil suit No.70 of 1980 in the Court of Third Civil Judge (Senior Division) at Rajkot for declaration that the so called oral termination of his services without assigning reasons, is arbitrary and against the principles of natural justice, unconstitutional, null and void and for

further declaration that he continues in service with all benefits.

2. The petitioner-defendant, resisted that suit by filing written statement and the defence was taken that the respondent-plaintiff was only a casual labourer for casual work and he was irregular in attendance and he on his own absented from duties and did not report for duty. It is not the case of any discharge or termination of service. The learned trial Court on 8th March 1982 decreed the suit of respondent-plaintiff and the appeal which has been preferred by the petitioner-defendant against the judgment and decree of the learned trial Court has also been dismissed on the ground of limitation. The matter was taken up by the defendant-petitioner before this Court by preferring Civil Revision Application No.292 of 1983. The said revision application has also been dismissed by this Court on 14th March 1983.

3. The petitioner has come up with the case in this Special Civil Application that at the time of hearing of the aforesaid Civil Revision Application, it was pointed out to this Court that the respondent herein is offered employment as casual labourer and that the judgment and decree passed by the trial Court, in as much as the trial Court directed the defendant to pay salary due from date of oral discharge till 2nd February 1980 was also complied with and that the salary till 2nd February 1980 was also deposited in the trial Court. It has further been pointed out by the learned counsel who was appearing in the said Civil Revision Application that the respondent herein has filed Execution application being Civil Darkhast No.189 of 1982 wherein he has prayed for issuance of Jangam Warrant for the amount of Rs.15,959.35 inter-alia alleging that the amount is due and payable from 3rd March 1979 to 31st July 1982, i.e. the date of judgment and decree passed by the trial Court and he has calculated the salary payable to him as if he is regularly absorbed. It appears that thereafter the Executing Court, on 30th October 1982 was pleased to order warrant to issue for recovery of amount as no objections were filed by the petitioner herein. The petitioner herein thereafter filed Civil Revision before this Court against the order of the Executing Court of issuing warrant. This Revision was allowed by this Court and the order dated 30th October 1982 passed in Execution case No.189 of 1982 was quashed and set aside and the petitioner herein was directed to file its objections before 20th April 1983 and the Executing Court was directed to proceed further in accordance with Rules.

The petitioner herein filed its objections before the Executing Court. The copy of the objections filed by petitioner herein is annexed alongwith this Special Civil Application as annexure 'B'. The objections filed by the petitioner were not considered by the trial Court and the same were rejected under the order dated 29th December 1983. This order of the Executing Court is impugned in this Special Civil Application.

4. After constitution of the Central Administrative Tribunal, this Special Civil Application has been transmitted to the Tribunal, but the Tribunal under its order dated 20th March 1980, has decided that in this matter, it has no jurisdiction and the papers have been sent back to this Court. A copy of this order is also filed by the parties on record of this proceedings. The order of the Tribunal has not been challenged by the petitioner before the Supreme Court and as such, it becomes final.

5. The learned counsel for the petitioner made twofold submissions before this Court. Firstly, it is contended that the Executing Court has not passed a speaking order. The objections filed by the petitioners have been dealt with in a very cursory and casual manner. The Executing Court has not even made a reference to the objections which have been raised by the petitioner. The Executing Court, without giving reasons for rejection of objections of the petitioner, passed the impugned order. It has next been contended that the order of the Executing Court is beyond decree which has been passed by the trial Court in favour of the respondent.

6. On the other hand, the learned counsel for the respondent has supported the impugned order. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

7. Before proceeding further to consider the contentions of the learned counsel for the parties, I consider it to be appropriate to reproduce the operative part of the decree passed in civil suit, which is as under:

"It is declared that plaintiff's oral order of discharge passed by S.D.O. (Phones) Rajkot is illegal, unconstitutional, null and void and without jurisdiction. It is further declared that plaintiff continues in service with all the benefits of salary, pay, allowances, seniority etc. Defendants do pay salary due from date of oral discharge till 2nd February 1980.

It is further declared that defendant's action of not considering the plaintiff for interview for the post of regular Mazdoor on the ground of his over age is illegal, unconstitutional, without jurisdiction and void. Defendant is directed to treat the case of the plaintiff for employment from due date and, therefore, take further action according to law. Defendant do pay the cost of the suit of the plaintiff and bear its own."

This decree is in two parts. In the first part, the learned trial Court has granted a declaration that the oral order of discharge of the petitioner from services passed by S.D.O. (Phones), Rajkot, is illegal, unconstitutional, null and void and without jurisdiction. Further declaration has been granted that the plaintiff continues in service with all benefits of salary, pay, allowances, seniority etc. The defendant in the civil suit and the petitioner herein was further directed to pay salary due from the date of oral discharge till 2nd February 1980. The second part of the decree is that declaration is granted that the defendant's action, the petitioner herein, of not considering the plaintiff for interview for the post of regular Mazdoor on the ground of his over age is illegal, unconstitutional, without jurisdiction and void. The petitioner herein was directed to treat the case of the plaintiff, the respondent herein, for employment from due date, and therefore, take further action according to law. The learned counsel for the petitioner, making reference to the objections filed by it before the Executing Court, contended that the Executing Court has committed serious illegality in issuing warrant for the amount which is calculated by the defendant, respondent herein, by treating him as if he was a regular Mazdoor, which is illegal and arbitrary. Though I find some substance in the contention made by the petitioner's counsel, but looking to the fact that decree has been made in this case as back as on 8th March 1982, I do not consider it proper to send this matter back to the Executing Court. I also do find sufficient merits in the contention of the learned counsel for the petitioner that the learned Executing Court has not passed a speaking order. On this count also, I do not consider it appropriate to send the matter back to the trial Court. Taking into consideration the fact that the parties are litigating for all these 14 years, I consider it to be appropriate and in the interest of justice to decide this matter finally on merits here.

8. From reading of the operative part of the decree of the trial Court, I am satisfied that in the second part thereof, the Court has given a declaration for consideration of case of the respondent for giving him regular appointment on the post of Mazdoor. That exercise was required to be undertaken by the petitioner, but instead of undertaking that exercise, the petitioner has thought it fit to indulge the poor and low paid employee in the litigation. When the petitioner has not complied with the decree, the low paid employee would have thought it proper to approach the Executing Court by filing Execution Application. The Executing Court may be incorrect in making of the order in giving the respondent full salary by taking it to be a case of regular employment of the respondent on the post of Mazdoor, but for all these years, the petitioner has not complied with the decree of the Court. Instead of challenging that order, the petitioner itself could have undertaken the exercise to consider the case of the respondent to give him regular employment in the cadre of Mazdoor with effect from the relevant date. From reading of the operative part of the judgment, it comes out that the respondent was not called for interview as he was considered to be over aged and that action was declared to be illegal, meaning thereby, the case of the respondent has to be considered. The order which has been passed by the Executive Court has been stayed by this Court in the present case. Both the counsel for the petitioner as well as for the respondent have not brought on record, what status now the respondent is having for all these years. It is the petition of year 1982 and during this period, whether the respondent has been given regular employment or not in the cadre of Mazdoor, is also not brought on record.

9. Taking into consideration totality of the facts of the case, interest of justice will be met in case this writ petition is disposed of with direction to the petitioner that it may consider the case of the respondent for regular post of Mazdoor from the due date. In case, the respondent is found suitable for giving him regular post of Mazdoor, he will be entitled for all the consequential benefits also. It is however made clear that in case the respondent has already been given regular post of Mazdoor, then he will be entitled only for difference of salary for the period from the due date to the date on which he was given regular post of Mazdoor. This exercise has to be undertaken by the petitioner within a period of four months from the date of receipt of certified copy of this order. The order of the Executing Court is set aside. Rule is made absolute

in the aforesaid terms with no order as to costs.

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(sunil)